IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.431 OF 2007
IN
NOTICE OF MOTION NO.481 OF 2007
IN
S.C.SUIT NO.551 OF 2007

1. His Gracious Geevarghese
   Mar Coorilose

2. Rev. Fr.Varghese Yohannan

3. Rev. Fr.Abraham Joseph

4. Mr. A.K.Kuruvilla

5. Mr. P.J.Chandy

6. Mr. M.G. Daniel

7. Mr. S.Thankachen .. Appellants
   (Orig.Deft.Nos.1
   to 3 and 5 to 8)

Versus

1. Mr. M.S.Joy

2. Mr. Paul Mathew

3. Mr. Pavalov C. Varkey

4. C. Thomas

5. K.M. Mathai

6. Mr. Rajan Mathew .. Respondent
   (Orig.Plaintiff)

7. Mr. C.Y. Jose .. Respondent
   (Orig.Defendant No.4)

Shri N.V. Walawalkar with Shri Suresh Pujari i/b. Shri Sajan Dommen, for the Appellants
Ms. Rajni Iyer i/b. Shri Kishor V. Tembe for the Respondent Nos. 1 to 6

CORAM : S.R. SATHE,J.

DATED : 01/11/2007

ORAL ORDER :-

1. Appellants-original defendant Nos.1 to 3 and 5 to 8 in S.C. Suit No.551 of 2007 have preferred this appeal against the order passed by Judge, City Civil Court, Bombay in Notice of Motion No.481 of 2007 whereby Plaintiff's application for temporary injunction restraining defendant Nos.5-6 from representing themselves and/or acting in the capacity of the purported elected representatives of the Church at the meetings of Malankara Church Association and restraining defendant Nos.5,7 and 8 from representing themselves and/or acting in the alleged capacity as purported elected representatives of the said church at the meetings of Diocese assembly till the disposal of the suit was allowed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiffs' and 'defendants'.

2. A short point which falls for consideration in this appeal is whether two members elected by Plaintiffs are entitled to represent the parish or whether two members elected in the meeting presided over in the defendant No.3 are entitled to represent parish church.

3. The brief facts giving rise to above question and consequently the present appeal are as under:-

Mar Gregorios Orthodox Syrian Church is a public and religious Trust registered under the Bombay Public Trust Act, 1950. Plaintiff No.1 is a vice chairmen of the said church and Plaintiff No.2 is honorary treasurer. Plaintiff Nos.3 to 6 are the members of the managing committee of the said church.

4. The defendant No.1 is diocesan bishop means he is the president of the church. The defendant No.2 is Vicar (priest) who is ex-officio chairmen of the church. The defendant No.3 is service priest. Defendant No.4 is Secretary and defendant Nos.5 to 8 are members of the church.

5. The general body meeting of the church was held on 14/01/2007. However, dispute arose in the said meeting as to who should preside over the said meeting and on that count members who had attended the meeting were divided in two groups. One, consisting of Plaintiffs and the other consisting of defendant Nos.1 to 3 and 5 to 8. Each group is alleging that they held the general body meeting and elected two members to

represent the church at Malankara Church Association. According to Plaintiff's group, they held general body meeting in which there were 42 members and they elected Plaintiff No.1 and defendant No.4 as unopposed representative of the said church to represent at the Malankara Church Association and Diocesan assembly. As against this, defendant Nos.1 to 3 and 5 to 8 contended that the meeting held by Plaintiffs was not legal and valid, but the meeting held under the presidentship of defendant No.3 was legal and valid and members elected by the said meeting are legal members who are entitled to represent the Church in the Malankara Church Association and Diocesan assembly.

6. The defendant No.4 therefore, by his letter dated 14/01/2007 lodged a complaint with his Holiness Moran Mar Basellios Didimos I, Catholicos of the East, Devolokam, Kottayam and also to the Tribunal of Malankara Orthodox Syrian Christian (hereafter referred to as MOSC) association at Catholicate office. Then Plaintiffs filed the present suit for declaration that the special general meeting of the church held on 14/01/2007 under the presidentship of Plaintiff No.1 was a legal, general body meeting of the church and the meeting held under the presidentship of No.3 was not

legal and valid and the members elected in the meeting presided over by Plaintiff No.1 are the legal members elected to represent church at the meeting of Malankara Church Association and not defendant Nos.5 and 6 who are elected in a meeting presided over by defendant No.3. Plaintiffs also prayed for permanent injunction restraining defendant Nos.5,6,7 and 8 from representing themselves as elected members of the church who are entitled to represent the church in the Malankara Church Association and diocesan assembly.

7. Plaintiffs also prayed for temporary injunction restraining defendant Nos. 5 to 8 representing themselves as elected members of the Church to represent Malankara Church Association, till the disposal of the suit.

8. The defendant Nos.1 to 3 and 5 to 8 filed their affidavit in reply and opposed the Notice of Motion on several grounds. Firstly, they contended that the suit is bad for non-joinder of necessary parties. According to defendants, all the 17 members who were present at the time of meeting and elected defendant Nos.5 to 8, are necessary parties to the present suit. Secondly, defendants contended that Plaintiffs have not obtained

necessary leave to file the present suit from the Charity Commissioner as required under section 51 of the Bombay Public Trust Act and suit is liable to be dismissed on that count. Thirdly, defendants contended that Plaintiffs have alleged that they elected two members to represent church in diocesan counsel but subsequently, they have alleged that through mistake it has been mentioned that the said members were elected for counsel but they are in fact for diocesan assembly. Defendants, therefore, contended that unless plaint is amended and necessary correction has been carried out by the Plaintiffs, they are not entitled for temporary injunction.

9. Defendants also contended that though parish church is having separate constitution and rules and regulations, if the same are not in consonance with the constitution of the Apex or main body i.e. M.O.S.C. then constitution of Malankara Orthodox Syrian Church would prevail. According to them, there was in fact no provision for election of members for diocesan assembly and Malankara Association in the constitution of parish Church. According to defendants, on 14/01/2007, Plaintiff No.1 had no right to preside over the meeting as there was no written permission/direction to that

effect issued by the Vicar of the parish church and as such in view of Rule-11 of the Parish Constitution the meeting alleged to have been presided over by Plaintiff No.1 was not legal and valid. As against this, defendant No.3 was specially authorized to preside over the meeting by the Bishop and as such, the meeting held under his Presidentship has to be treated as legal and valid and consequently, election of defendant Nos.5 to 8 must be held valid.

10. Defendant also contended that the elections of Plaintiff No.1 and defendant No.4 is not at all approved by the M.O.S.C. Hence, on that ground also election of Plaintiff No.1 and defendant No.4 has to be held illegal. Lastly, defendants contended that defendant Nos.5 to 8 have already attended, took part and exercised their votes in the meeting of diocesan assembly and also Malankara Association and as such Notice of Motion has in fact become infructuous. Defendants, therefore, contended that Plaintiffs have not made out any prima facie case for granting temporary injunction and the balance of convenience is also not in their favour. According to defendants,there are more than 20 lakhs members and several parishes and if temporary injunction as prayed is granted, it will

affect the entire functioning of the Church. Hence on all these grounds, defendants prayed for the dismissal of the Notice of Motion.

11. After hearing arguments advanced by both the learned Advocates and considering the documents produced on record Judge, City Civil Court, Mumbai came to the conclusion that Plaintiffs have prima facie shown that the meeting held under the Presidentship of Plaintiff No.1 was legal and valid and 42 members attending the said meeting have elected Plaintiff No.1 and defendant No.4 as members to represent Church in diocesan assembly and in Malankara Association. As against this, even if defendant's case is accepted still then only 17 members who were present in their meeting have elected defendant Nos.5 to 8. So, under such circumstances also it has to be held that election of Plaintiff and defendant No.4 is legal and valid. The learned Trial Judge, therefore, granted temporary injunction as mentioned above.

12. Being aggrieved by the said order, defendants have filed the present appeal. In this appeal before me, Shri Walawalkar, learned Senior Advocate for the defendants has urged 3 points. Firstly, he submitted

that the learned Trial Judge has not at all taken into consideration the relevant provisions of the Constitution of the parish church and constitution of the Malankara Orthodox Syrian Church. Secondly, he canvassed before me that there was in fact no provision in parish church for election of the members for representing their church in diocesan assembly and Malankara Association. According to him, even as per the rules and regulations of parish church, Plaintiff No.1 has no right to preside over the general body meeting dated 14/01/2007 because there was no written permission from Vicar to that effect. Secondly, he canvassed before me that the Apex body or Church has approved election held in the meeting presided over by the defendant No.3. So, if temporary injunction is granted it would amount to interfering in the administration and spiritual activities of MOSC. So, considering this aspect the learned Trial Judge should not have granted temporary injunction as prayed by the Plaintiff. Lastly, he submitted that defendant Nos.5 to 8 have in fact attended the meeting of diocesan assembly and the Malankara Association and as such Notice of Motion has in fact become infructuous. Learned Senior Advocate, therefore, submitted that the appeal be allowed. The order passed by the learned

Trial Judge be set aside and the Plaintiff's Notice of Motion be dismissed. As against this, Ms. Rajni Iyer, learned Advocate for the Plaintiffs supported the order passed by the learned Trial Judge and submitted that Plaintiff No.1 being vice chairmen had a right to preside over the meeting of the general body held on 14/01/2007 and defendant No.3 was in fact not eligible to preside over the meeting as he was not even member of the parish church. She, therefore, submitted that Plaintiff has made out a prima facie case to show that the meeting held under the presidentship of Plaintiff No.1 was legal and valid and majority members have elected Plaintiff Nos.1 and defendant No.4 as their members to represent diocesan assembly and Malankara Association. She, therefore, submitted that the appeal be dismissed.

13. From the pleadings of the parties and submissions made before me, it is very clear that there is no dispute between Plaintiffs and defendants on the point that MOSC is highest body so far as spiritual hierarchy and administrative set up of the Church in question is concerned. It is also not disputed that the general body meeting of Chembur Parish Trust was called on 14/01/2007. According to Plaintiffs, when 59 members

of the said Church gathered for the said meeting one group of the said members started saying that Plaintiff No.1 has no legal right to preside over the meeting while members of the other group started saying that Plaintiff No.1 has a right and defendant No.3 is not having a right to preside over the meeting as contended by the other group. According to both the groups, on that day general body meeting took place at the said place. It is Plaintiff's case that their meeting was held under the presidentship of Plaintiff No.1 and defendant No.4 were elected for the posts by 42 members who were present in the said meeting. As against this, it is the contention of the defendant that their meeting was attended by 17 members and in that meeting defendant Nos.5 to 8 were elected to represent their Church in diocesan assembly and Malankara Association. So, in order to decide the controversy involved in the present matter it is necessary to know the provisions made in the constitution of MOSC as well as in the Constitution of Chembur Parish Trust.

14. It is an admitted fact that meeting of the general body was called on 14/01/2007 by Vicar i.e. defendant No.2. However, on that day, he could not attend the said meeting. Even then meeting has actually

taken place. So, the question arises who was entitled to preside over the said meeting. It is the case of the Plaintiff that said meeting was presided over by Plaintiff No.1 as he was vice chairmen. The contention of the defendants is that as per Rule-11 of Rules and Regulations of MOSC, there was no written permission or authority given to Plaintiff and hence, he was not entitled to preside over the general body meeting. In order to find out whether there is any substance in this contention it would be worthwhile to see what Rule-11 says. It runs as follows :-

> ***"The Vicar shall be the chairmen of the General Body and assisting priests, if any, shall be the Vice Chairmen (en). In addition, one of the laity duly proposed shall be elected Vice Chairmen by the General Body. The Vicar shall preside over the General Body meeting other than those convened by the president. If for any reason the Vicar can not preside over any meetings one of the Vice Chairmen or in their absence one of the members, on the direction in writing of the Vicar may preside over the General Body meeting."***

From the bear reading of this Rule, it is very clear that in the absence of Vicar, one of the vice chairmen can preside over the meeting. The written permission of Vicar is necessary only if one of the members is to preside over the General body meeting

i.e. when Vicar and vice chairmen are not available. In the instant case, in the affidavit in reply filed by the defendants at page-166 the defendants have clearly stated :

> ***"It is true that Plaintiff No.1 is Vice Chairmen of the Parish."***

15. So, once it is held that Plaintiff No.1 was vice chairmen then as per Rule-11 and in absence of any other rule either in the constitution of MOSC or in the Constitution of Chembur Parish Church it has to be held that Plaintiff No.1 was legally entitled to preside over the general body meeting dated 14/01/2007. From the material on record, it does appear that on that day, there were 59 members present for the said meeting. However, one group of members i.e.17 in number left the meeting protesting action of Plaintiff and consequently, 42 members were present for general body meeting and they have unanimously elected Plaintiff and defendant No.4 to represent Church for diocesan assembly and Malankara Association.

16. Much is made about the fact that MOSC has not given ascent to the meeting held by the Plaintiffs. However, it is clear that the said ascent was not given merely on the ground that there was no permission in

writing given by Vicar to Plaintiff No.1 to preside over the meeting. However, as pointed out by me above I am of the view that such written permission was not at all necessary in respect of Plaintiff No.1 he being admittedly vice chairmen of the parish. Merely because MOSC has not given ascent would not make any difference and that would not be sufficient to hold prima facie that the election of Plaintiff and defendant No.4 is not legal and valid.

17. Shri Walwalkar, learned Senior Advocate for the defendants argued before me that granting temporary injunction would in fact cause hindrance in day to day management of the Church and it is well settled that normally Court should not pass any order which would amount to interference in the internal management of the Association. The proposition made by the learned Senior Advocate is not disputed and can not be disputed. However, it must be noted that in the instant case, there is no question of any interference in the day to day affairs of the Church in question. Simple question involved here is whether Plaintiff and defendant No.4 are legally elected members or whether defendant Nos.5 to 8 are legally elected members and for that it is only necessary to see prima facie as to

how their election has taken place. When it appears from the record that election of defendant Nos. 5 to 8 was held in a meeting presided over by defendant No.3 who was not even a member of the parish church and as such not competent to preside over the meeting, the said election has to be held invalid. As against this, prima facie it does appear that election of Plaintiff No.1 and defendant No.4 is legal and valid. So, restraining others from obstructing or interfering the said legally elected members in carrying out the management and day to day affairs of the Church/Trust would certainly not amount to interference in the administration or spiritual activities of the Trust in question. So, I am not inclined to accept the arguments advanced by the learned Senior Advocate in this behalf.

18. Learned Senior Advocate for the defendants has not argued before me that the point regarding leave under section-51 of the Bombay Public Trust Act. So, having regard to all the facts and circumstances of the case and the relevant provisions of the Constitution of MOSC as well as of Chembur Parish Church, I have no hesitation to hold that Plaintiffs have made out a prima facie case for granting temporary injunction. If legally elected members are not allowed to work and the

members whose election prima facie does not appear to be legal and valid are allowed to function, then it would in fact amount to perpetuate the illegality. Thus, balance of convenience is also in favour of Plaintiff and not in favour of defendant.

19. There is nothing on record to show that while passing the discretionary order of temporary injunction the learned Trial Judge has acted arbitrarily or capriciously or that finding recorded by him is not borne from the material on record. Under the circumstances, there is no necessity for this Appellate Court to interfere with the order passed by the learned Trial Judge.

20. In this view of the matter, there is no substance in this appeal. Hence, I pass the following order :-

O R D E R

Appeal is dismissed.

Under the circumstances of the case parties to bear their own costs of this appeal.

At this stage, the learned Advocate for the Appellant submitted that as the appellants desire to approach the Supreme Court and as the Supreme Court has

already passed the order to continue statusquo granted by the Trial Court till the disposal of the A.O., the said order of statusquo be extended for a period of 6 weeks from today. The learned Advocate for the respondents submitted that as it is, as a result of statusquo, the persons who were in fact not entitled to take part in the management of the church in question, are taking part and as such there is no necessity to pass any statusquo order or to extend the same.

Having regard to all the facts and circumstances and with a view to give an opportunity to the appellants to approach the Apex Court the order of statusquo granted earlier by the trial court and extended thereafter till the disposal of the appeal is to continue for a further period of 4 weeks from today.

(S.R.SATHE,J.)